

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Chrysafis v. Marks

No. 21-1493, United States Court of Appeals for the Second Circuit (September 29, 2021)

SUMMARY

The Second Circuit held that landlords' due process challenges to New York's expired COVID-19 eviction moratorium (CEEFPa Part A 2020) were moot because the new statute (Subpart C(A) 2021) provided a hearing to contest tenant hardship declarations, remedying the defect identified by the Supreme Court. The court vacated the district court's judgment and remanded with leave to replead, declining to rule on First Amendment (compelled speech, petition clause) and vagueness claims, which were left for initial consideration in the district court. The landlords' motion to enjoin enforcement of the new statute was denied for lack of jurisdiction due to the remand. Key topics: mootness due to statutory amendment, procedural due process (right to hearing), eviction moratorium, COVID-19.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jon O. Newman; José A. Cabranes; Richard C. Wesley
JURISDICTION	Federal
DECIDED	September 29, 2021
DOCKET	21-1493
DISPOSITION	remanded
PROCEDURAL POSTURE	Appeal from a judgment dismissing the complaint and an order denying a preliminary injunction.
PRECEDENTIAL VALUE	published
PARTIES	Pantelis Chrysafis, Betty S. Cohen, Brandie LaCasse, Mudan Shi, Feng Zhou v. Lawrence K. Marks, Adrian H. Anderson, James Dzurenda, Joseph Fucito, Margaret Garnett, Caroline Tang-Alejandro

TOPICS

subject matter jurisdiction

due process

landlord tenant

statutory interpretation

first amendment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the landlords' due process claims are moot after the expiration of the old eviction moratorium statute and the enactment of a new statute.
2. Whether the court has jurisdiction to enjoin enforcement of the new statute.
3. Whether the court should adjudicate the landlords' First Amendment and vagueness claims on this appeal.

HOLDINGS

1. The due process claims are moot because the old statute expired and the new statute remedies the due process defect identified by the Supreme Court.
2. The court lacks jurisdiction to enjoin enforcement of the new statute because the appeal is remanded, terminating the court's jurisdiction over the appeal.
3. The court declines to adjudicate those claims at this time, deferring consideration to a new appeal after the district court addresses the new statute.

KEY QUOTATIONS

“If a tenant self-certifies financial hardship, Part A of CEEFPA generally precludes a landlord from contesting that certification and denies the landlord a hearing.” (at 8)

“IF YOUR LANDLORD MOVES TO CHALLENGE YOUR HARDSHIP CLAIM, YOU ARE ENTITLED TO A HEARING. IF THE COURT RULES YOUR HARDSHIP CLAIM INVALID AFTER THE HEARING, THE LAWSUIT MAY PROCEED TOWARD POSSIBLE EVICTION, BUT UNLESS AND UNTIL THE COURT ISSUES AN EVICTION WARRANT AGAINST YOU, YOU MAY NOT BE EVICTED.” (at 9)

“Both the statutory and constitutional questions [raised by the plaintiffs] are significantly affected by one of the changes in the new law.” (at 11)

FACTUAL BACKGROUND

The plaintiffs, New York landlords, challenged Part A of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (CEEFPA) on due process, First Amendment, and vagueness grounds. The old statute allowed tenants to self-certify financial hardship and precluded landlords from contesting the certification or obtaining a hearing. The Supreme Court enjoined enforcement of Part A, finding it inconsistent with due process. The old statute expired on August 31, 2021, and a new statute, Subpart A of Part C of 2021 N.Y. Laws Ch. 417 (S50001), was enacted on September 1, 2021, which provides landlords an opportunity to challenge a hardship declaration and obtain a hearing.

PROCEDURAL HISTORY

The United States District Court for the Eastern District of New York (Brown, J.) dismissed the landlords' complaint challenging New York's eviction moratorium and denied their motion for a preliminary injunction.

The landlords appealed. The Supreme Court subsequently enjoined enforcement of the old statute. The old statute expired, and a new statute was enacted. The Second Circuit held the due process claims moot, vacated the district court's judgment, and remanded with leave to replead.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The case is remanded to the District Court with leave for the parties to amend their pleadings and for reconsideration in light of the intervening changes in New York law. The mandate will issue 48 hours after the filing of this opinion.

CASES CITED

- Chrysafis v. Marks, No. 21A8, 2021 WL 3560766 (U.S. Aug. 12, 2021)
- Lewis v. Continental Bank Corp., 494 U.S. 472 (1990)
- Diffenderfer v. Cent. Baptist Church of Miami, Fla., Inc., 404 U.S. 412 (1972)
- Lamar Advertising of Penn, LLC v. Town of Orchard Park, New York, 356 F.3d 365 (2d Cir. 2004)
- Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, 508 U.S. 656 (1993)
- Cuomo v. U.S. Dept. of Transportation, 981 F.2d 50 (2d Cir. 1992)
- American Freedom Defense Initiative v. Metropolitan Transportation Authority, 815 F.3d 105 (2d Cir. 2016)
- Fusari v. Steinberg, 419 U.S. 379 (1975)
- New York State Rifle & Pistol Assn. v. City of New York, 140 S. Ct. 1525 (2020)
- U.S. v. Munsingwear, 340 U.S. 36 (1950)